

Decision 05-05-043 May 26, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 M) for Authorization Pursuant to Public
Utilities Code Section 851 to Grant an Easement
for Installation, Operation, Maintenance and Use
of Domestic Water Wells.

Application 05-02-007
(Filed February 9, 2005)

OPINION GRANTING APPLICATION

I. Summary

This decision grants the application of Pacific Gas and Electric Company (PG&E) pursuant to Pub. Util. Code § 851 to grant an easement to Michael L. Browning and Deborah H. Browning (Brownings) for installation, operation, maintenance, and use of domestic water wells on a parcel of land near Manton, Shasta County, California for which PG&E owns all surface and subsurface water and water rights. PG&E does not need access to the water; the easement limits the amount of water the Brownings may draw; and the grant will not otherwise interfere with PG&E's ability to serve the public. The grant therefore is in the public interest pursuant to § 851, and we grant the application.

We deny without prejudice the aspect of PG&E's application that asks us to develop a streamlined process for future easement applications, as beyond the scope of this proceeding. This proceeding is closed.

II. Background

A. The Easement

The Brownings own a residential lot in Shasta County for which PG&E owns the surface and subsurface water and water rights.¹ PG&E does not own the land itself. The Brownings wish to build a home on their lot, and request an easement from PG&E to extract subsurface water via domestic wells. Shasta County will not issue the Brownings a permit to develop the property until PG&E grants the easement.

In 1984, PG&E filed an Indenture with the Shasta County Recorder stipulating the terms and conditions for granting easements to private property owners for the construction and operation of water wells in the county.² The Indenture provides that easements must not adversely affect PG&E's electricity service to the general public and limits the number of wells to one per land parcel.

The lot at issue is not part of the property PG&E granted to the state when it emerged from bankruptcy, administered by the Pacific Forest and Watershed Lands Stewardship Council (Council).³ Were the land located in an area governed by the Council, we might approach the application differently.

¹ Lot 21 of the Manton Heights Private Road Subdivision, Tract No. 1523, as shown upon the map filed for record in Book 17 of Maps at page 79, Shasta County Records, Assessor's Parcel Number 703-310-021.

² Shasta County Recorder—File #2131010295, filed March 27, 1984, Book 2048, page 212.

³ The Council-administered program is described at http://www.pge.com/about_us/environmental_enhancement_corp/.

B. Payment/Ratemaking

As payment for the easements, PG&E will receive \$491 from the Brownings. The easement limits the quantity of water extracted to one acre-foot per year and the maximum pump capacity to 30 gallons per minute. PG&E does not own the real property related to the easements and therefore no associated book value exists. The water rights subject to this application are associated with PG&E's non-nuclear, hydroelectric generation facilities and are governed by its Utility Generation Balancing Account (UGBA). PG&E will credit any net compensation to this account.

III. Discussion

A. Transaction in the Public Interest

Pub. Util. Code § 851 requires a public utility to obtain Commission authorization before it “may sell, lease, assign or otherwise dispose of ... property necessary or useful in the performance of its duties to the public.” The basic task of the Commission in a § 851 proceeding is to determine whether the transaction serves the public interest: “The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.”⁴

PG&E does not need access to the water; the easement limits the amount of water the Brownings may draw; and the grant will not otherwise interfere with PG&E’s ability to serve the public. The grant therefore is in the public interest pursuant to § 851.

⁴ D.02-01-058.

B. Environmental Review

The California Environmental Quality Act (CEQA, Public Resources Code § 21000 *et seq.*) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Because the Commission must issue a discretionary decision (*i.e.*, grant § 851 authority) without which the proposed activity will not proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines, Section 15051(b)).

Here, Shasta County is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for the proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency’s environmental documents and findings before acting upon or approving the project. The specific activities a Responsible Agency must conduct are contained in CEQA Guidelines, Section 15096.

In this application, PG&E requests that the Commission find that the installation, construction, and maintenance of a domestic water well as part of construction of single family homes is categorically exempt from the CEQA pursuant to CEQA Guidelines, Section 15303(b) and (d). Section 15303(b) provides an exemption from CEQA review for a duplex or similar multi-family residential structure totaling no more than four dwelling units. Section 15303(d)

provides an exemption from CEQA review for water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction. Nonetheless, we find that it is unnecessary to grant this request for exemption from CEQA.

As we found in Decision (D.) 04-04-056,⁵ Shasta County as Lead Agency conducted a full environmental review for the development on the lots in the Manton Heights Subdivision, Tract No. 1523, the property at issue here. We prefer to rely on full CEQA review where the Lead Agency has determined it to be warranted. Specifically, in 1982 the County certified a Final Environmental Impact Report (EIR) approving residential development for the Manton Heights Subdivision, Tract No. 1523. By Resolution No. 5593 dated December 9, 1982, the County Planning Commission approved the EIR and on the same date approved the tract map by Resolution No. 5594. The County Planning Commission later modified and extended the tract map by Resolution No. 5794 (dated May 26, 1983) and Resolution No. 6382 (dated January 10, 1985), respectively.

According to correspondence entered into the record for the proceeding leading to D.04-04-056 from the County Planning Division, the EIR and Resolutions constitute the final discretionary environmental review for the Manton Heights Subdivision. Following certification of the EIR and recording of the tract map, the County issues ministerial building permits for residential construction on lots that is consistent with the subdivision development approved by the EIR. The County verified that the installation, construction, and operation of residential water wells for the Tract No. 1523 lots specified in this

⁵ Pursuant to Commission Rule 72, we may cite to this information in reaching our decision here.

application is consistent with the subdivision development approved in the Final EIR. This construction would now be approved by the County as part of the building permit authorizing the residential development on the Manton Heights lots.

Although the County now issues only ministerial permits for the construction in question, we believe that pursuant to the EIR and recording of the tract map, the County conducted adequate CEQA review applicable to the project activity that would likely result from our approval of this application. Accordingly, we adopt the County's findings and find that CEQA has adequately been conducted for purposes of our approval. The installation, construction, and operation of water wells for the Tract No. 1523 lots is consistent with the subdivision development approved in the EIR.

C. Future Applications

We have granted other, similar easements to lot owners in the same location as the Brownings' property. (D.04-04-056.) PG&E states it expects to receive future requests pursuant to the Indenture for easements for domestic wells and asks us to develop a streamlined, advice letter process for future applications. The development of such a process is outside the scope of this application, and we therefore deny this aspect of PG&E's request without prejudice.

IV. Categorization of Proceeding

This proceeding was preliminarily categorized as ratesetting and we preliminarily determined that a hearing was unnecessary. Based on the record, we conclude that the proceeding is properly categorized and that a public hearing is unnecessary.

V. Assignment of Proceedings

Susan P. Kennedy is the Assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in this proceeding.

VI. Waiver of Comment Period

This is an uncontested matter where the decision grants the relief requested. Accordingly, pursuant to Rule 77.7 (f)(2) of the Rules, the 30-day period for public review and comment is being waived.

Findings of Fact

1. By this application, PG&E seeks authority under Pub. Util. Code § 851 to grant water rights, in the form of an easement, to the Brownings, private property owners in Shasta County, for the installation and operation of a water well.
2. The Brownings co-signed Application 05-02-007 in support of the easements.
3. PG&E does not own the subject properties, but does own the surface and subsurface water rights.
4. The Brownings intend to construct a single-family home on their property. Shasta County will not issue a construction permits until the water rights easement is granted.
5. PG&E filed an Indenture on March 27, 1984 with the Shasta County Recorder describing the conditions and terms of transferring water rights to private property owners in the county. The Indenture requires that any easements shall not adversely affect PG&E's electricity service to the general public and limits the number of wells to one per land parcel.
6. PG&E will receive \$491 from the Brownings as payment for the easement and credit any net compensation to its UGBA.

7. The easement limits the quantity of water extracted to one acre-foot per year and the maximum pump capacity to 30 gallons per minute.

8. Shasta County is the Lead Agency for the project under CEQA.

9. The Commission is a Responsible Agency for the project under CEQA.

10. The County certified a Final EIR for residential development of the Manton Heights Subdivision Tract No. 1523.

11. The easement requested in this application is for a lot in Tract No. 1523 in the Manton Heights Subdivision.

12. The installation, construction, and operation of a water well for the Tract No. 1523 lots is consistent with the subdivision development approved in the EIR.

13. The lot at issue is not part of the property PG&E granted to the state when it emerged from bankruptcy, administered by the Pacific Forest and Watershed Lands Stewardship Council.

14. The proposed easement is in the public interest.

Conclusions of Law

1. The applicant has satisfied the requirements of Pub. Util. Code § 851.

2. An evidentiary hearing is not required.

3. The County conducted adequate CEQA review for the project activity that would likely occur from approval of this application.

4. We should adopt the County's findings and find that CEQA review has adequately been conducted for purposes of our approval.

5. Our approval of the transaction is in the public interest because PG&E does not need access to the water; the easement limits the amount of water the Brownings may draw; and the grant will not otherwise interfere with PG&E's ability to serve the public.

O R D E R

IT IS ORDERED that:

1. We approve the request of Pacific Gas and Electric Company (PG&E) to grant water rights, in the form of an easement, to Michael L. Browning and Deborah H. Browning (Brownings), private property owners, for the following lot:

Lot 21 of the Manton Heights Private Road Subdivision, Tract No. 1523, as shown upon the map filed for record in Book 17 of Maps at page 79, Shasta County Records, Assessor's Parcel Number 703-310-021

2. The Brownings shall pay PG&E the sum of \$491 for granting the water rights easement.

3. The applicant and grantees shall comply with the terms and conditions of the easement.

4. The applicant and grantees shall comply with the terms and conditions for granting water rights to private property owners described in Shasta County Indenture Number 2131010295, recorded with the County Recorder on March 27, 1984, at the request of PG&E.

5. Within 30 days of issuing the grants, PG&E shall file an advice letter with this Commission noticing the completed transfer.

6. PG&E shall record the proceeds from these grants in its Utility Generation Balancing Account.

7. PG&E's request for a streamlined future easement transfer process is outside the scope of this proceeding.

8. The 30-day comment period is waived, as this is an uncontested matter and this decision grants the relief requested.

9. Application 05-02-007 is closed.

This order is effective today.

Dated May 26, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners